

§ 760.637 Determination of production.

(a) Except for value loss crops, production for the purposes of this part includes all harvested, appraised, and assigned production for the payment acres determined according to § 760.632.

(b) The FSA county committee will use the best available data to determine production, including RMA and NAP loss records and yields for insured and noninsured crops.

(c) The production of any eligible crop harvested more than once in a crop year will include the total harvested production from all harvests.

(d) Crop production losses occurring in tropical regions, as defined in part 1437, subpart F of this chapter, will be based on a crop year beginning on January 1 and ending on December 31 of the same calendar year. All crop harvests in tropical regions that take place between those dates will be considered a single crop.

(e) Any record of an appraisal of crop production conducted by RMA or FSA through a certified loss adjuster will be used if available. Unharvested appraised production will be included in the calculation of revenue under SURE. If the unharvested appraised crop is subsequently harvested for the original intended use, the larger of the actual or appraised production will be used to determine payment.

(1) If no appraisal is available, the participant is required to submit verifiable or reliable production evidence.

(2) If the participant does not have verifiable or reliable production evidence, the FSA county committee will use the higher of the participant's crop certification or the maximum average loss level to determine the participant's crop production losses.

(f) Production will be adjusted based on a whole grain equivalent, as established by FSA, for all crops with an intended use of grain, but harvested as silage, cobbage, or hay, cracked, rolled, or crimped.

(g) For crops sold in a market that is not a recognized market for that crop and has no established county expected yield and NAMP, the quantity of such crops will not be considered production; rather, 100 percent of the salvage

value will be included in the revenue calculation.

(h) Production from different counties that is commingled on the farm before it was a matter of record and cannot be separated by using records or other means acceptable to FSA will have the NAMP prorated to each respective county by FSA. Commingled production may be attributed to the applicable county, if the participant made the location of production of a crop a matter of record before commingling, if the participant does either of the following:

(1) Provides copies of verifiable documents showing that production of the crop was purchased, acquired, or otherwise obtained from the farm in that county; or

(2) Had the farm's production in that county measured in a manner acceptable to the FSA county committee.

(i) The FSA county committee will assign production for the purpose of NAMP for the farm if the FSA county committee determines that the participant failed to provide verifiable or reliable production records.

(j) If RMA loss records are not available, or if the FSA county committee determines that the RMA loss records as reported by the insured participant appear to be questionable or incomplete, or if the FSA county committee makes inquiry, then participants are responsible for:

(1) Retaining and providing, when required, the best available verifiable and reliable production records available for the crops;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of production for the crop on a farm, whether or not records reflect this production;

(4) Providing the information in a manner that can be easily understood by the FSA county committee; and

(5) Providing supporting documentation if the FSA county committee has reason to question the disaster event or that all production has been taken into account.

(k) The participant must supply verifiable or reliable production records to substantiate production to

the FSA county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, acceptable production records include: Commercial receipts; settlement sheets; warehouse ledger sheets or load summaries; or appraisal information from a loss adjuster acceptable to FSA. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of by means other than commercial channels, acceptable production records for these purposes include: Truck scale tickets; appraisal information from a loss adjuster acceptable to FSA; contemporaneous reliable diaries; or other documentary evidence, such as contemporaneous reliable measurements. Determinations of reliability with respect to this paragraph will take into account, as appropriate, the ability of the agency to verify the evidence as well as the similarity of the evidence to reports or data received by FSA for the crop or similar crops. Other factors deemed relevant may also be taken into account.

(l) If no verifiable or reliable production records are available, the FSA county committee will use the higher of the participant's certification or the maximum average loss level to determine production.

(m) Participants must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment.

(n) FSA may verify the production evidence submitted with records on file at the warehouse, gin, or other entity that received or may have received the reported production.

§ 760.638 Determination of SURE yield.

(a) Except for value loss crops as specified in § 760.634, a SURE yield will be determined for each crop, type, and intended use on a farm, using the higher of the participant's weighted:

(1) Adjusted actual production history yield as determined in paragraph (b) of this section; or

(2) Counter-cyclical yield as determined in paragraph (c) of this section.

(b) The adjusted actual production history yield, as defined in § 760.602, will be weighted by the applicable crop year total planted and prevented plant-

ed acres, by crop, type, and intended use for each county. RMA data will be used for calculating the SURE yield for insured crops.

(c) The counter-cyclical yield for a crop on a SURE farm will be weighted in such manner as FSA deems fit taking into account a desire for a consistent system and FSA's ability to make timely yield determinations.

(d) Participants who do not purchase crop insurance or NAP coverage, but who are otherwise eligible for payment, will have a SURE yield determined by the FSA county committee as follows:

(1) A weighted yield, based on planted and prevented planted acres, the location county, crop type, and intended use, will be determined at 65 percent of the county expected yield for each crop.

(2) The SURE yield will be the higher of the yield calculated using the method in paragraph (d)(1) of this section or 65 percent of the weighted counter-cyclical yield as determined in paragraph (c) of this section.

(e) For those participants with crop insurance but without an adjusted actual production history yield, a SURE yield will be determined by the applicable FSA county committee. This paragraph will apply in the case where the insurance policy does not require an actual production history yield, or where a participant has no production history.

[74 FR 68490, Dec. 28, 2009, as amended at 75 FR 19189, Apr. 14, 2010]

§ 760.640 National average market price.

(a) The Deputy Administrator will establish the National Average Market Price (NAMP) using the best sources available, as determined by the Deputy Administrator, which may include, but are not limited to, data from NASS, Cooperative Extension Service, Agricultural Marketing Service, crop insurance, and NAP.

(b) NAMP may be adjusted by the FSA State committee, in accordance with instructions issued by the Deputy Administrator and as specified in § 760.641, to recognize average quality loss factors that are reflected in the market by county or part of a county.